

1. Heard Mr.K.K. Mahanta, learned senior counsel appearing for the petitioner. Also heard Mr. S. Dutta, learned counsel appearing for the respondent No.4, United India Insurance Co. Ltd. Mr. A.J. Atia, learned counsel represents the respondent No.3 who is the claimant in the MACT proceedings.

2. The writ petitioner who was the owner of the bus bearing Registration No. AS-J- 6117 has filed the present petition challenging the order dt. 7.8.2000 passed by the Certificate Officer, Nagaon whereby in respect of the amount awarded to the claimant by the learned MACT, Nagaon, a direction has been made for payment of the awarded amount by the owner/writ petitioner and by the Insurance Co. in equal proportion.

3. The bus owned by the writ petitioner met with an accident on 12.10.88 which led to death of the husband of respondent No.3. Accordingly, respondent No.3 Smti. Utpala Bora filed an application before the learned MACT, Nagaon claiming compensation for the death of her husband. In the said proceedings the writ petitioner was arrayed as O.P. No.1 and the Insurance Co. was arrayed as O.P. No.2.

4. By an order dt. 15.6.93 the learned MACT held the claimant to be entitled to a sum of Rs.2,28,400/- together with interest thereon @ 12% p.a. from 31.1.89. The learned Tribunal also held the O.P. No.1 and 2 jointly and severally liable for the amount to be paid to the claimant.

After the entitlement of the claimant was finalized on 15.6.93, an application dt. 31.1.94 was filed by the Insurance Co. before the MACT claiming that in terms of the policy the maximum liability to be incurred by the Insurance Co. in one event is Rs.50,000/-. In the said application, the Insurance Co. claimed that as they have already deposited Rs.50,000/-, during the proceedings before the Tribunal with interest thereon, and their maximum liability being limited to Rs.50,000/-, necessary order be passed releasing the Insurance Co. from further liabilities in the case.

By order dt. 1.2.94, the learned MACT rejected the said application filed by the Insurance Co. on the ground that the plea taken by the Insurance Co. is belated and accordingly rejected the prayer made by the Insurance Co. to limit the extent of their liability for an amount of Rs. 50,000/-.

5. For getting the payment the claimant obtained certificate from the MACT and approached the Certificate Officer for necessary orders to obtain payment in terms of the order passed by the learned MACT, Nagaon.

6. By the impugned order dt. 7.8.2000, the Certificate Officer, Nagaon, in course of the execution proceedings directed that the amount payable to the claimant is to be paid by both the writ petitioner (owner of the bus) and the Insurance Co in equal proportion.

7. Mr. KK Mahanta, learned senior counsel appearing for the petitioner has contended that such a direction given in course of the execution proceedings could not have been given as the Insurance Co. did not take any plea seeking to limit the extent of their liability, in course of the proceedings before the MACT. The subsequent plea taken by the Insurance Co. after the judgment dt. 15.6.93 passed by the MACT, was also rejected by the learned Tribunal on 1.2.94. Under such circumstances the apportionment order made by the learned Certificate Officer was unwarranted in the facts of the instant case.

Mr. S. Dutta, learned counsel appearing for the Insurance Co, on the other hand, argues that the accident in the instant case occurred in 12.10.88 and in terms of provisions of Section 95(2)(b)(i) of the Motor Vehicles Act, 1939, as existing then, maximum liability that can be imposed on the Insurance Co. would be limited to Rs.50,000/- only. On the basis of the said statutory provisions, it is contended by Mr. Dutta, that the Certificate Officer had acted in accordance with law in passing the impugned order.

Mr. A.J. Atia, learned counsel for the claimant has submitted that although the

accident had taken place on 12.10.88, apart from receiving a sum of Rs.55,735/- (part of which is interest amount), the claimant is awaiting receipt of the balance payment ordered by the MACT for last so many years and accordingly the learned counsel prays that an order be passed for early disbursement of payment to the claimant.

8. On consideration of the pleadings and submissions, it appears that the Insurance Co. did not take any plea in course of the proceedings before the MACT prior to delivery of judgment on 15.3.96, seeking to limit its liability to the extent of Rs.50,000/-. In the absence of any such plea taken in course of the proceedings, I am of the view that the Insurance Co. ought not be permitted to raise such a plea for the first time only after delivery of the judgment by the MACT.

I am further of the view that the Certificate Officer, while discharging function as an Executing Authority, is not entitled to go beyond the judgment passed, which is before him for the purpose of execution only, and accordingly it would be incompetent for him to pass an order apportioning the liability of the ordered amount between the owner of the vehicle /writ petitioner and the Insurance Co.

Such an order was obviously without any authority of law and accordingly the same is interfered with.

9. As regards the plea made by the claimant for early disbursement of the amount, a submission has been made that in the event of reduction of the interest awarded, the Insurance Co. would be prepared to expeditiously disburse the balance amount ordered to be paid to the claimant vide judgment dt. 15.3.96 by the learned MACT, Nagaon.

The learned MACT held the claimant to be entitled to a sum of Rs.2,28,400/- and further directed that the said amount would be payable together with interest @ 12% p.a. from 31.3.89.

Mr. A.J. Atia appearing for the claimant submits that if the payment is made quickly by the Insurance Co., he is agreeable to receive a reduced amount by way of reduction in the rate of interest.

In so far as interest is concerned, the Insurance Co. had already made payment of Rs.5,735/- as interest before the MACT which is already received by the claimant.

10. In view of the submissions made, the respondent No. 4 Insurance Co. is directed to deposit the balance principal amount (after deducting an amount of Rs. 50,000/-) which is quantified as Rs.1,78,400/-. The said amount is to be deposited by the Insurance Co. within 60 days from today. The rate of interest payable on the quantified principal amount is reduced to 8% from 12% which will be applied w.e.f. 31.1.89.

The Insurance Co. will make the necessary calculation to the extent of their liability towards payment of interest and deposit the quantified amount along with the principal amount of Rs. 1,78,400/- within the aforesaid period of 60 days. The amount of Rs.5,735/- earlier paid towards interest, shall be set off from the amount of interest which will be now deposited by the Insurance Co.

On making of the aforesaid payment by the Insurance Co. by an Account Payee Cheque in favour of the Registrar General of this Court, the claimant would be entitled to receive payment of the said deposited amount after proper identification of the claimant, to the satisfaction of the Registrar General.

With the aforesaid order and direction the writ petition is allowed to the extent as indicated above.